UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF ADMINISTRATIVE LAW JUDGES

The Secretary, United States Department of Housing and Urban Development, on behalf of Housing Discrimination Project, Inc.

Charging Party,

v.

George Ross and Mary Ross,

Respondents.

HUDALJ 01-92-0466-8
Decided: July 7, 1994

George Ross, *pro se*

Thomas W. Rodick, Esq.
For the Charging Party

James F. Donnelly, Esq.
For the Intervenor

Before: William C. Cregar
Administrative Law Judge

INITIAL DECISION AND ORDER

This matter arose as a result of a complaint of discrimination based upon national origin and sex in violation of the Fair Housing Act as amended, 42 U.S.C. §§. 3601, *et seq.* ("Fair Housing Act" or "Act") and 24 C.F.R. Parts 100, 103 and 104. Based upon a complaint filed against George and Mary Ross ("Respondents") with the Department of Housing and Urban Development ("the Charging Party" or "HUD") by The Housing Discrimination Project, Inc. ("HDP"), HUD's Regional Counsel issued a Determination of Reasonable Cause and Charge of

Discrimination on December 21, 1993. On February 8, 1994, I granted HDP's Request to intervene in this proceeding. A hearing was held in Springfield, Massachusetts, on March 22, 1994. Post-hearing briefs were filed timely by the Charging Party and the Intervenor on May 6, 1994. Respondents did not file a post-hearing brief.

Respondents are charged with 1) unlawfully discriminating against Hispanic persons by refusing to rent or otherwise make housing available to them and by discriminating against them in the terms and conditions of rental on the basis of their national origin; and 2) discriminating against women by refusing to rent to persons receiving Aid for Families with Dependent Children ("AFDC") and housing subsidies. *See* 42 U.S.C. § 3604 (a); 24 C.F.R. §§ 100.50 (b)(1) - (3); 100.65 (a). The Charging Party and Intervenors seek the imposition of a $10,000 civil penalty and appropriate injunctive and equitable relief. Respondents deny any intention to discriminate.

Statement of Facts

1. Intervenor HDP is a private, nonprofit corporation with its principal place of business at 57 Suffolk Street, Holyoke, Massachusetts. It was incorporated to promote fair housing practices in Hamden and Hampshire Counties, Massachusetts by 1) providing education to the general public, housing providers and tenants; 2) counseling individuals who believe they have been subjected to unlawful discrimination; 3) investigating housing discrimination complaints; and 4) pursuing legal remedies for discriminatory housing practices. As part of its investigatory and enforcement functions, HDP conducts "tests" to determine whether housing providers engage in discriminatory housing practices. Testing in this context is a method in which trained individuals pose as apartment seekers, simulate the conditions that gave rise to an allegation of discrimination, and control for all variables except the characteristic that is believed to be the basis for the unlawful discrimination. Stip., ¶¶ 1- 4.[1]

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[1]The following reference abbreviations are used in this decision: "C.P. Ex." for Charging Party's Exhibit, "Int. Ex." for Intervenors' Exhibit, "Res. Ex." for Respondent's Exhibit, "Stip." for Stipulation of Fact entered into

2. Respondents George and Mary Ross reside at 40 River Terrace, Holyoke, Massachusetts. They have at all relevant times owned a two family rental dwelling located at 9 Beacon Avenue in Holyoke. During the summer of 1992, Mr. Ross managed the dwelling and made all rental decisions. The dwelling has 2 two-bedroom apartments, one on the first floor, and the other on the second floor. Respondents rent both apartments on a tenancy-at-will basis. Respondents have never occupied either of these apartments. Stip., ¶¶ 5-10.

3. Jeffrey and Christine Cadieux, a non-Hispanic couple who did not receive welfare assistance, rented the second floor apartment from July 1991 through June 1992. Stip. ¶ 11. While showing the apartment to Mr. Cadieux in June 1991, Mr. Ross mentioned to him that he had a couple of applicants and that he "did not want to rent to Puerto Ricans." Tr. p. 47.

4. On or before July 14, 1992, Mr. Ross advertised the second floor apartment in the Holyoke Transcript-Telegram for four days. The stated rent was $475 per month, plus utilities. Stip., ¶¶ 11-12.

5. On July 14, 1992, Magaly Dejesus, a Hispanic woman, called the telephone number listed in the advertisement. Mr. Ross answered the phone. Among other things, he asked her source of income. Upon learning from her that she receives AFDC, he said, "no" and hung up the phone. Ms. Dejesus speaks with a Hispanic accent.
Tr. 31-32.

6. Believing she had been discriminated against, she told her sister, Maria Dejesus, what had happened. Maria immediately called the same number. Among other things Mr. Ross asked her source of income. Maria told him that she was on AFDC.[2] He stated, "I don't rent to people on welfare." She replied that she thought that this restriction was illegal to which Mr. Ross

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by the parties, and "Tr." for Transcript followed by the page number.

[2]In fact she is employed as an infant and toddler teacher. Tr. p. 37.

replied that he didn't care and that he would rent to whomever he wanted and hung up the phone. Tr. pp. 33, 38.

7. On or about July 25, 1992, Leslie Caride, a non-Hispanic woman, called the telephone number listed in the rental advertisement. In the course of the conversation, she told Mr. Ross that she was on welfare. He stated that he was not interested in renting to her and hung up. She visited and received assistance from HDP. At HDP's urging she called the number and told Mr. Ross that she had a state housing subsidy. He told her it made no difference because he wanted working people and he hung up the phone. Tr. pp. 41-43.

8. With HDP assistance, Magaly Dejesus and Leslie Caride completed affidavits and filed complaints with the Massachusetts Commission Against Discrimination.
Tr. p. 34. Kathleen Fletcher, HDP's Testing Coordinator, developed two paired tests involving four testers designed to establish whether the housing provider was refusing to rent on the basis of national origin and/or source of income. Tr. pp. 58-59.

9. Teresa Sanchez, a Hispanic woman tester, called the number listed in the advertisement on July 20, 1992, and left a message that she was interested in renting the apartment. The next day around 12:00 p.m., Mr. Ross returned her call. In response to his questions, she stated that both she and her husband worked. She asked if she could make an appointment to see the apartment. He told her that she could, if she could show him that she had the money for the first month's rent and the security deposit ($950), and that she should call him back when she had the money. He also asked her what type of car she drove. She was given the number of Ross Insurance as the number to call back. Two days later she left a message with Mr. Ross' secretary to call her back. He never returned her call. Ms. Sanchez speaks with a heavy Hispanic accent. C.P.
Ex. 2B; Tr. pp. 95-97.

10. Deborah Janes, a non-Hispanic woman tester, called the number listed in the advertisement on July 21, 1992, at 12:30 p.m., approximately one-half hour after Ms. Sanchez' second conversation with Mr. Ross. In response to Mr. Ross' questions she stated that she worked and that her husband was a graduate student at the University of Connecticut. He invited her to see the apartment and made an appointment to show it at

1:30 p.m. the next day. He did not tell Ms. Janes that she must show him that she had $950 before he would show her the apartment, nor did he ask her what kind of car she drove. C.P. Ex. 2C; Tr. pp. 105-106.

11. Kathleen Fletcher, using the alias "Kathy Shapiro," also acted as a tester. She is non-Hispanic. At about 6:00 p.m. on July 21, 1992, she called the number listed in the advertisement. In response to Mr. Ross' questions, she told him that she received AFDC and a housing subsidy. He mentioned that he was showing the apartment to someone else the next day (Deborah Janes), took her name and phone number, and said that he would call her if the apartment was still available. He never called her back. C.P. Ex. 2D; Tr. pp. 67-68.

12. On July 22, 1992, Mr. Ross showed the apartment to Ms. Janes and offered to rent it to her. He told her that it would not be good for him to rent to people with Section 8, or Section 20, or unemployment and that "I keep them out." He also said that he had good tenants downstairs and that he "wanted to keep it nice for them," and that unemployed people would "just be hanging around the house all day." He requested that Ms. Janes give him her decision by Friday, July 24, 1992. C.P. Ex. 2C; Tr. pp. 107-108.

13. On July 25, 1992, and July 26, 1992, Mr. Ross left messages for Ms. Janes on her answering machine, advising her that the apartment was ready if she wanted it and to get back to him. On July 26, 1992, Ms. Janes returned his calls telling him that she and her husband had found another apartment. C.P. Ex. 2C; Tr. pp. 109-110.

14. Deborah Gromack, a non-Hispanic woman tester, called Mr. Ross, on
July 28, 1992, at about 1:00 p.m. In answer to his questions, she told him that she received AFDC and had a Section 8 subsidy. Mr. Ross told her that he wanted $950 cash up front or he would not rent to her. Ms. Gromack told him that she would check with her case worker to see if her housing voucher was the same as cash and would call him back. She did so later that afternoon. During the subsequent phone call she told him that the voucher was not the same as cash. He said he already knew that, and he would not rent to her. He then hung up the phone. C.P. Ex. 2E; Tr. pp. 114-117.

15. On August 16, 1992, Respondents rented the second floor apartment to Evette Tetreault and Scott Rainville, a non-Hispanic couple not receiving AFDC payments. In April 1993, the first floor apartment became vacant. During the time this apartment was available, Mr. Ross told Ms. Tetreault that he didn't want to rent to Hispanics or Negroes, "because they played the music too loud, they drank too much and they were always on welfare, and he didn't want the apartment being ruined." Stip. ¶¶ 13-14; Tr. p. 51.

16. Statistics maintained by the Massachusetts Department of Public Welfare establish that households headed by females comprise an overwhelming percentage of the AFDC recipients in Holyoke and in Hamden County, of which the City of Holyoke is a part. Thus, in March 1992, 95.3 per cent of the households receiving AFDC in Holyoke and 94.9 per cent of such households in Hamden County were headed by females. There was virtually no change in the percentage of female headed households from the period covered by these statistics and July 1992. C.P. Ex. 3; Tr. pp. 86-90.

17. The two paired tests cost HDP $1,900. HDP reimbursed Kathleen Fletcher $280 for airfare to and from Pittsburgh, Pennsylvania, in order to have her available to testify in this case.[3] HDP will reimburse her $720.40 for associated travel costs including, lost salary for missing five days of work, mileage, and per diem expenses ($500 + $50.40 + $120). HDP will also reimburse Teresa Sanchez $45 for the wages she lost as a result of attending and testifying at the hearing. Tr. pp. 69, 75-77, 128, 130.

18. HDP's Co-Director, Peggy Maisel, is a practicing attorney. She spent 17.5 hours at an hourly rate of $75 counseling Magaly Dejesus and Leslie Caride and helping them file their complaints with the Massachusetts Commission Against Discrimination. Tr. p. 129.

19. The anticipated cost to HDP of training Respondents and monitoring their future compliance with the Act over a three year period is, respectively, $2,250 and $450.

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[3]Ms. Fletcher left HDP in October 1992. She now resides in Pittsburgh. Tr. pp. 52, 70.

Discussion

Standing

HDP is an "aggrieved person" within the meaning of the Act which defines that term to include "any person who . . . claims to have been injured by a discriminatory housing practice." 42 U.S.C. § 3602 (i). The term "persons" includes corporations as well as individuals. 42 U.S.C. § 3602 (d). HDP claims injury from Respondent's actions and has standing because, at a minimum, it expended resources investigating and prosecuting this action. *See City of Chicago v. Matchmaker Real Estate Sales Center*, 982 F.2d 1086, 1095 (7th Cir. 1992), *cert. denied,* 113 S. Ct. 2961 (1993); *HUD v. Jancik*, 2 Fair Housing - Fair Lending (P-H) ¶ 25,058, 25,565 (HUDALJ Oct. 1, 1993), *appeal pending* (7th Cir. 1993).

Governing Legal Framework

Congress passed the Fair Housing Act as Title VIII of the Civil Rights Act of 1968 to "[e]nsure the removal of artificial, arbitrary, and unnecessary barriers when the barriers operate invidiously to discriminate on the basis of impermissible characteristics." *United States v. Parma*, 494 F. Supp. 1049, 1053 (N.D. Ohio 1980), *rev'd on other grounds,* 661 F.2d 562 (6th Cir.), *cert. denied,* 465 U.S. 926 (1982); *see also United States v. City of Black Jack*, 508 F.2d 1179 (8th Cir. 1974), *cert. denied,* 422 U.S. 1042 (1975).

The Charging Party alleges national origin and sex discrimination based on violations of 42 U.S.C. §§ 3604 (a) and (b). These sections of the Act make it unlawful:

> (a) To refuse to . . . rent after the making of a bona fide offer, or to refuse to negotiate for the . . . rental of, or otherwise make unavailable or deny, a dwelling to any person because of . . . sex . . . or national origin.
>
> (b) To discriminate against any person in the terms, conditions, or privileges of . . . rental . . . or in the

> provision of services
> or facilities in connection therewith, because of
> . . . sex. . . or
> national origin.

42 U.S.C. §§ 3604(a), (b).

The Charging Party contends that it has proved Respondents' intent to discriminate because of national origin both by direct and indirect evidence. Direct evidence establishes a proposition directly rather than inferentially. *See HUD v. Tucker,* 2 Fair Housing - Fair Lending (P-H) ¶ 25,033, 25,347-48 (HUDALJ Aug. 24, 1992). Where direct evidence of discrimination is presented, such evidence, if established by a preponderance of evidence, is sufficient to support a finding of discrimination. *Pinchback v. Armistead Homes Corp.*, 907 F.2d 1447, 1452 (4th Cir.), *cert. denied*, 111 S. Ct. 515 (1990); *HUD v. Jerrard*, 2 Fair Housing - Fair Lending (P-H) ¶ 25,005, 25,087 (HUDALJ Sept. 28, 1990); *HUD v. Morgan*, 2 Fair Housing - Fair Lending (P-H)
¶ 25,008, 25,134 (HUDALJ July 25, 1991) *aff'd,* 985 F.2d 1451 (10th Cir. 1993).

Intentional discrimination can also be established using the three-part analysis of *McDonnell Douglas*. This analysis can be summarized as follows:

> First, the plaintiff has the burden of proving a prima facie case of discrimination by a preponderance of the evidence. . . . Second, if the plaintiff sufficiently establishes a prima facie case, the burden shifts to the defendant to "articulate some legitimate, nondiscriminatory reason" for its action. . . . Third, if the defendant satisfies
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> this burden, the plaintiff has the opportunity to prove by a preponderance that the legitimate reasons asserted by the defendant are in fact mere pretext.

Pollitt v. Bramel, 669 F.Supp. 172, 175 (S.D. Ohio 1987) (quoting *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802, 804 (1973)).

Specifically, in the circumstances of this case, a prima

facie case of national origin discrimination would be demonstrated by proof that: 1) Magaly Dejesus and Teresa Sanchez are Hispanic; 2) they were qualified to rent the subject property and when they expressed an interest in the apartment they were not provided with an appointment;[4] 3) they were denied the housing; and 4) Respondents subsequently rented the subject property to a non-Hispanic person. If a prima facie case is established, the burden of production shifts to Respondents to articulate a legitimate, non-discriminatory reason(s) for denying the housing. *Texas Department of Community Affairs v. Burdine*, 450 U.S. 248 (1978). If the articulation of a legitimate, non-discriminatory reason(s) raises a genuine issue of fact, the burden again shifts to the Charging Party to demonstrate that the articulated reason(s) is merely pretextual.

The Charging Party also contends that it has made a statistical demonstration that Respondents' practice of refusing to rent to persons receiving welfare assistance has a discriminatory effect on women and therefore violates the Act. Absent a showing of business necessity, facially neutral policies which have a discriminatory impact on a protected class violate the Act. *HUD v. Mountain Side Mobile Estates*, 2 Fair Housing - Fair Lending (P-H) ¶ 25,064, 25,619 (HUD Secretary Oct. 20, 1993), *appeal pending* (10th Cir. 1993). Disparate impact may be shown by a statistical showing that a particular facially neutral policy has a disproportionate adverse impact on members of a protected class within the total group to which the policy applies. *Betsey v. Turtle Creek Associates*, 736 F.2d 983, 987 (4th Cir. 1984). Once this demonstration has been made, Respondents incur the burden of demonstrating that the policy is warranted by a compelling business necessity. *Mountain Side,* 2 Fair Housing - Fair Lending at 25,621.

National Origin Discrimination

Direct Evidence

Direct evidence that Mr. Ross intended to refuse to rent to Hispanic applicants because of their national origin is supplied by his own statements. Thus, Mr. Cadieux, the previous tenant

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[4] *See HUD v. Hacker*, 2 Fair Housing - Fair Lending (P-H) ¶ 25,038, 25,401 (HUDALJ Dec. 2, 1992).

of the subject apartment, credibly testified that Mr. Ross told him that "he did not want to rent to Puerto Ricans." Evette Tetreault, the successful applicant for the apartment, testified that in April 1993, Mr. Ross told her that he didn't want to rent to Hispanics, "because they played the music too loud, drank too much and they were always on welfare, and he didn't want the apartment being ruined." Mr. Ross denies having made these statements. Tr. p. 153. I do not credit Mr. Ross' denial. Both Mr. Cadieux and Ms. Tetreault were highly credible witnesses. Neither has any personal stake in the outcome of this case, nor is there any apparent motive for either witness to fabricate his or her testimony. Accordingly, a preponderance of evidence directly establishes that Mr. Ross intended to discriminate against Hispanics because of their national origin.

Indirect Evidence

The evidence establishes that: 1) Magaly Dejesus and Teresa Sanchez are Hispanic; 2) they applied for and were qualified to rent the subject property; 3) they were denied the housing; and 4) Respondents subsequently rented the subject property to non-Hispanic persons. Accordingly, the Charging Party has established a prima face case of national origin discrimination.

It is undisputed that Magaly Dejesus and Teresa Sanchez are Hispanic. Their distinct Hispanic accents clearly revealed their national origin to Mr. Ross. Although neither filled out a rental application, Mr. Ross did not afford them the opportunity to do so. He hung up on Ms. Dejesus when he learned that she received AFDC, and he never returned the message Ms. Sanchez left with Mr. Ross' secretary. It is undisputed that both were qualified[5] to rent the subject property. By failing to afford Magaly Dejesus and Teresa Sanchez an opportunity to apply for the subject apartment, both were denied the subject apartment. Finally, Evette Tetreault and Scott Rainville are non-Hispanic persons.

Having established a prima facie case of discrimination,

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[5]Because Ms. Sanchez is a tester, her apparent rather than actual qualifications to rent the property satisfy this prong of the test. Mr. Ross had no reason to believe she would not have qualified.

the burden of production shifts to Respondents to articulate a legitimate, non-discriminatory reason(s) for denying the housing. Mr. Ross denies having hung up the phone on Magaly Dejesus and claims that he unsuccessfully tried to return Teresa Sanchez' telephone call, but that he had a wrong number. Tr. pp. 152, 157. He also states that he went to Ms. Sanchez husband's place of employment and was told that he never worked there. Tr. p. 152.

I do not credit Mr. Ross' statements that he did not hang up on Ms. Dejesus or that he attempted to reach Ms. Sanchez. Mr. Ross is simply not a credible witness.[6] I noted earlier that his denial that he made statements to both his former and present tenants to the effect that he does not rent to Hispanics is flatly contradicted by those disinterested witnesses. He also wrote an October 15, 1992, letter to the HUD Compliance Division Director in which he stated that he did not show the subject apartment to anyone in July or August because it had been rented the same day he ran the advertisement (before July 14, 1992). This letter is flatly contradicted by Ms. Janes who testified that Mr. Ross showed her the apartment on July 22, 1992, and offered to rent it to her. Res. Ex. A; Tr. pp. 106-108, 163. Of course, if what he wrote were true, there would have been no reason to show the apartment to Ms. Janes and to encourage her to rent it. Confronted with his own letter on cross-examination, he stated that he showed the apartment to Ms. Janes in August or September, and that the letter was "wrong."

Respondents have failed to articulate a legitimate, non-discriminatory reason for denying the housing to Magaly Dejesus and Teresa Sanchez. Accordingly, a preponderance of indirect evidence demonstrates that Respondents denied the subject apartment to both Ms. Dejesus and Ms. Sanchez because of their national origin. In addition, as discussed above, this demonstration is also made by a preponderance of direct evidence. Thus, I conclude that Respondents violated 42 U.S.C. § 3604 (a)
and (b).

Sex Discrimination

[6]For this reason, I also decline to credit his conclusory testimony that never intended to discriminate, that he has not discriminated in the past, and that he is not a prejudiced person.

Ample evidence supports the Charging Party's contention that Mr. Ross maintained a "no welfare policy," rejecting applicants who received AFDC or housing subsidies. He maintained this policy despite the fact that these subsidies qualified the recipients to rent his apartment. Magaly Dejesus, Maria Dejesus, and Leslie Caride each testified that when they mentioned to Mr. Ross that they received AFDC he hung up the phone. He informed Maria Dejesus that he "does not rent to people on welfare." He told Leslie Caride that he only wants working people. He told Deborah Janes that he keeps out people on Section 8, Section 20 or unemployment. He insisted that Deborah Gromack demonstrate to him that she had $950 in cash before he would rent to her. He imposed no similar condition on tester Deborah Janes who claimed to be employed and not in need of welfare assistance. When Ms. Gromack informed him that she had a payment voucher, but that it was not cash, he hung up on her as well. Finally, he admits that because of a prior bad experience,[7] he has a little "stigmentation" (sic) toward those on welfare. Tr. p. 150.

The Massachusetts Department of Public Welfare statistics establish that
Respondents' "no welfare policy" has a disparate impact on women. The overwhelming percentage of AFDC recipients in Holyoke and in Hamden County are women. Because the Charging Party has made this showing, the burden shifts to Respondents to establish by objective evidence a business necessity sufficiently compelling to justify the practice. Respondents have not met this burden. They have offered no evidence in support of a justifiable business necessity. Accordingly, I conclude that Respondents have discriminated against women because of their sex, in violation of 42 U.S.C. § 3604 (a).

Remedies

Having found that Respondents engaged in discriminatory practices, Complainants are entitled to "such relief as may be appropriate, which may include actual damages . . . and injunctive or other equitable relief." 42 U.S.C. § 3612 (g)(3).

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[7]He states that he rented to a woman whose husband left her. She had difficulty obtaining welfare and his rental payments were delayed as a result. Tr. p. 150.

Respondents may also be assessed a civil penalty "to vindicate the public interest." *Id.* HDP and the Charging Party seek $3,927.90 in damages for diversion of HDP's resources and $3,350[8] to compensate HDP for the costs of training Respondents, monitoring their future conduct, counselling other victims of discrimination, and providing "outreach"[9] to other area agencies. Both the Charging Party and Intervenors seek the maximum civil penalty of $10,000 and certain equitable relief.

Economic Loss

Past Diversion of Resources

A fair housing organization may be compensated for the diversion of its resources which result from its intervention in a housing discrimination case. *Village of Bellwood v. Dwivedi,* 895 F.2d 1521 (7th Cir. 1990); *Saunders v. General Servs. Corp.,* 659 F. Supp. 1042 (E.D. Va. 1987); *Jancik,* 2 Fair Housing - Fair Lending at 25,567; *HUD v. Properties Unlimited*, 2 Fair Housing - Fair Lending (P-H) ¶ 25,009, 25,148 (HUDALJ Aug. 5, 1991).

> The time and money that a fair housing organization . . . spends pursuing a legal remedy for housing discrimination diverts time and money away from the organization's other functions and goals. In other words, discrimination costs the organization the opportunity to use its resources elsewhere. These "opportunity costs" for the diversion of resources should be recouped from the parties responsible for the discrimination.

Dwivedi, 895 F.2d at 1526.

In order to prosecute this action, HDP expended resources related to this litigation and investigation which could have been used for its other programs. HDP spent $1,900 on the two paired tests. Kathleen Fletcher's airfare to and from

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[8]HDP requests an "unascertained" amount for counselling victims of discrimination. Int. Brief at 3.

[9]HDP's "outreach" consists of it setting up programs to supply information and training to other fair housing agencies. Tr. p. 135.

Pittsburgh, Pennsylvania, to Springfield, Massachusetts, was $280. Her associated travel cost HDP $720.40, including lost salary for missing five days of work, mileage, and per diem expenses ($500 + $50.40 + $120). Teresa Sanchez is to be reimbursed $45 for wages she lost as a result of attending and testifying at the hearing. Finally, Margaret Maisel spent 17.5 hours at a rate of $75 per hour for a total of $1,312.50 on work associated with this case. Accordingly, HDP is entitled to reimbursement in the amount of $3,927.90 for the past diversion of its resources.

Future Diversion of Resources

HDP seeks to establish a training course for Respondents at a cost of $1,050 for the first year and $600 for each of the following two years. In addition, HDP estimates that it will cost $450 to monitor Respondents' rental practices for a three year period. The civil penalty that I have imposed in this case should be sufficient to deter Respondents from committing intentional acts of discrimination in the future. However, training and future monitoring would help to insure that Respondents avoid practices which have a discriminatory effect. Accordingly, I find that an award reimbursing HDP for its future training and monitoring costs is warranted in this case. *See Matchmaker*, 982 F.2d at 1099; *Jancik* 2 Fair Housing - Fair Lending at 25,567-68; *Properties Unlimited*, 2 Fair Housing - Fair Lending at 25,148-49.

I conclude that the Council's claim for reimbursement for future diversion of its resources for three years is reasonable and appropriate under the circumstances of this case. Three years should be a sufficiently lengthy period to insure Respondent's future compliance. Accordingly, the Council will be awarded $2,700 ($1,050 + ($600 x 2) +450) to compensate it for the future diversion of its resources.

I decline to award HDP damages to enable it to counsel victims of discrimination in the future and to provide "outreach" to other area agencies. These claims are in the nature of assessments to help HDP finance its existing and future programs rather than to compensate it for economic loss. The record fails to demonstrate that Mr. Ross' discriminatory acts resulted in or compelled HDP to expend resources (other than those for which HDP is already being compensated) to

neutralize the effect of his discriminatory acts.[10] *Cf., Spann v. Colonial Village, Inc.* 899 F.2d 24, 27 (D.C. Cir. 1990).

Civil Penalty

To vindicate the public interest, the Act also authorizes an administrative law judge to impose civil penalties upon respondents who violate the Act. 42 U.S.C. § 812 (g)(3)(A); 24 C.F.R. § 104.910(b)(3). Determining an appropriate penalty requires consideration of five factors: (1) the nature and circumstances of the violation; (2) the goal of deterrence; (3) whether a respondent has previously been adjudged to have committed unlawful housing discrimination; (4) a respondent's financial resources; and (5) the degree of a respondent's culpability. *See HUD v. Jerrard,* 2 Fair Housing - Fair Lending (P-H) ¶ 25,005, 25,092 (HUDALJ Sept. 28, 1990); *HUD v. Blackwell* 2 Fair Housing - Fair Lending (P-H) ¶ 25,001, 25,014-15 (HUDALJ Dec. 21, 1989), *aff'd,* 908 F.2d 984 (11th Cir. 1990); House Comm. on the Judiciary, *Fair Housing Amendments Act of 1988,* H.R. Rep. No. 711, 100th Cong., 2d Sess. at 37 (1988). Both the Charging Party and Intervenor seek imposition against Respondents of the maximum civil penalty of $10,000 based upon Mr. Ross' discrimination against Hispanics.[11]

Nature and Circumstances of the Violation and Culpability

The nature and circumstances of this violation merit the maximum civil penalty. Mr. Ross stereotyped Hispanics as people

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[10]Evidence of an actual diversion of resources rather than an abstract injury is necessary to satisfy this type of claim. *See* Alan W. Heifetz & Thomas C. Heinz, *Separating the Objective, the Subjective, and the Speculative: Assessing Compensatory Damages in Fair Housing Adjudications,* 26 The John Marshall Law Review 3, 16 n.75 (1992); *Jancik,* 2 Fair Housing - Fair Lending at 25,568.

[11]The Charging Party does not seek a civil penalty for the sex discrimination violations, acknowledging that they were unintentional. C.P. Brief, p. 24, n. 13.

who played music too loud, drank too much, and were always on welfare and allowed his prejudices against Hispanics to determine his rental decisions. He bluntly either refused to deal with Hispanics, or placed onerous burdens on them. His violations were serious, intentional, and knowing.

Deterrence

The goals of both individual and general deterrence would be furthered by the imposition of a substantial civil penalty. Respondents still own the two multi-family units involved in this case. Mr. Ross' false denial of the blatant discriminatory statements that he made to Mr. Cadieux and Ms. Tetreault justifies a substantial civil penalty to insure his future compliance with the act. In addition the imposition of a civil penalty will serve the goal of deterring others inclined to commit similar violations. Substantial penalties send the message to violators that housing discrimination is not only unlawful, but also expensive. *Jerrard,* 2 Fair Housing - Fair Lending at 25,092.

Lack of Previous Violations

There is no evidence that Respondents have previously been found to have committed an unlawful discriminatory housing practice. Consequently, the maximum civil penalty that may be assessed against them is $10,000, pursuant to 42 U.S.C. § 812 (g)(3)(A) and 24 C.F.R. § 104.910 (b)(3)(i)(A).

Respondents' Financial Circumstances

Evidence regarding Respondents' financial circumstances is peculiarly within their knowledge. Therefore they have the burden of introducing such evidence into the record. In its absence, a penalty may be imposed without consideration of Respondents' financial circumstances. *See Campbell v. United States*, 365 U.S. 85, 96 (1961); *Jerrard,* 2 Fair Housing - Fair Lending at 25,092; *Blackwell,* 2 Fair Housing - Fair Lending at 25,015.

Mr. Ross testified that he is heavily in debt and lacks sufficient funds to pay either damages or a civil penalty. Tr.

p. 150. However, he also testified that he is the part owner of an insurance agency, that he owns a home as well as the subject rental property, that his daughter attends an expensive private school, that both he and his wife are employed, and that they have a combined income of $42,000. Tr. pp. 151, 157-159. However, he has failed to produce credible, verifiable evidence of his financial condition, e.g., tax returns, audited financial statements, etc. Rather, proof of his financial condition rests exclusively on his own testimony. As I noted above, I do not find him to be a credible witness. Mary Ross did not testify or present evidence of her financial circumstances. Accordingly, Respondents failed to demonstrate their financial inability to pay a civil penalty. After consideration of the five factors, I determine that imposition of a $10,000 penalty is warranted against Respondents George and Mary Ross jointly and severally.

Injunctive Relief

An administrative law judge may order injunctive or other equitable relief to make a complainant whole and protect the public interest in fair housing.[12] 42 U.S.C. § 3612 (g)(3). The purposes of injunctive relief include the following: eliminating the effects of past discrimination, preventing future discrimination, and positioning the aggrieved persons as close as possible to the situation they would have been in, but for the discrimination. *See Park View Heights Corp. v. City of Black Jack*, 605 F.2d 1033, 1036 (8th Cir. 1979), *cert. denied*, 445 U.S. 905 (1980). Once a judge has determined that discrimination has occurred, he or she has "the power as well as the duty to `use any available remedy to make good the wrong done.'" *Moore v. Townsend*, 525 F.2d 482, 485 (7th Cir. 1975) (citations omitted). The injunctive provisions of the following Order serve all of these purposes.

Conclusion

The preponderance of the evidence shows that Respondents discriminated against Intervenor, the Housing Discrimination

[12]"Injunctive relief should be structured to achieve the twin goals of insuring that the Act is not violated in the future and removing any lingering effects of past discrimination." *HUD v. Blackwell,* 908 F.2d 864, 874 (11th Cir. 1990) (quoting *Marable v. Walker,* 704 F.2d 1219, 1221 (11th Cir. 1983)).

Project, Inc., on the basis of sex and national origin in violation of section 804 (a) and (b) of the Act and 24 C.F.R. §§ 100.60 (a) and 100.65. The Housing Discrimination Project, Inc. suffered actual damages for which it will receive compensatory awards. Further, to vindicate the public interest, injunctive relief will be ordered, as well as a civil penalty against Respondents George and Mary Ross.

ORDER

It is hereby ORDERED that:

1. Respondents George and Mary Ross are permanently enjoined from discriminating with respect to housing. Prohibited actions include, but are not limited to:

a. refusing or failing to rent a dwelling, or refusing to negotiate for the rental of a dwelling, to any person because of race, color, sex or national origin;

b. otherwise making unavailable or denying a dwelling to any person because of race, color, sex or national origin;

c. discriminating against any person in the terms, conditions, or privileges of the rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, sex or national origin;

d. making, printing, or publishing, or causing to be made, printed, or published, any notice, statement, or advertisement with respect to the rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, sex or national origin;

e. coercing, intimidating, threatening, or interfering with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by the Fair Housing Act;

f. retaliating against Intervenors the Housing Discrimination Project, Inc. or anyone else for their participation in this case or for any matter related thereto.

2. Respondents George and Mary Ross and their agents and employees shall cease to employ any policies or practices that discriminate against women or Hispanics.

3. Respondents George and Mary Ross and their agents and employees shall refrain from using any lease provisions, rules, and regulations, and other documentation or advertisements, that indicate a discriminatory preference or limitation based on race, color, sex or national origin.

4. Consistent with 24 C.F.R. Part 109, Respondents George and Mary Ross shall display the HUD fair housing logo and slogan in all advertising and documents routinely provided to the public. Consistent with 24 C.F.R. Part 110, Respondents shall display the HUD fair housing poster alongside any "for rent" signs posted in connection with any dwellings that he owns, manages, or otherwise operates, as of the date of this Order and subsequent to the entry of this Order.

5. Respondents George and Mary Ross shall institute internal record-keeping procedures, with respect to any operation they own and any other real property acquired by them that are adequate to comply with the requirements set forth in this Order. These will include keeping all records described in paragraph 6 of this Order.
Respondents will permit representatives of HUD to inspect and copy all pertinent records at any and all reasonable times and upon reasonable notice. Respondents will also permit representatives of HDP to inspect and copy all pertinent records twice each year upon reasonable notice. Representatives of HUD and HDP shall endeavor to minimize any inconvenience to Respondents occasioned by the inspection of such records.

6. On the last day of every third period beginning, 30 days after this decision becomes final (or four times per year), and continuing for three years from the date this Order becomes final, Respondents George and Mary Ross shall submit reports containing the following information to HUD's Boston Regional Office of Fair Housing and Equal Opportunity, Tip O'Neill Federal Building, 10 Causeway Street, Boston, Massachusetts 02222-1092, provided that the director of that office may modify this
paragraph of this Order as he or she deems necessary to make its

requirements less, but not more, burdensome:

a. a duplicate of every written application, and a log of all persons who applied for occupancy at any of the properties owned, operated, managed, or otherwise controlled in whole or in part by Respondents indicating the name and address of each applicant, the number of persons to reside in the unit, the number of bedrooms in the unit for which the applicant applied, whether the applicant was rejected or accepted, the date on which the applicant was notified of acceptance or rejection, and, if rejected, the reason for such rejection. Respondents shall maintain the originals of all applications described in the log.

b. A list of vacancies at properties owned, operated, managed, or otherwise controlled in whole or in part by Respondents during the reporting period, including: the address of the unit, the number of bedrooms in the unit, the date the tenant gave notice of an intent to move out, the date the tenant moved out, the date the unit was rented again or committed to a new rental, and the date the new tenant moved in.

c. Sample copies of advertisements published during the reporting period, specifying the dates and media used or, if applicable, a statement that no advertisements have been published during the reporting period.

d. A list of all people who inquired, in writing, in person, or by telephone, about renting an apartment, including their names and addresses, the date of their inquiry, and the disposition of their inquiry.

e. A description of any changes in rules, regulations, leases, or other documents provided to or signed by current or new tenants or applicants (regardless of whether the change was formal or informal, written or unwritten) made during the reporting period, and a statement of when the change was made, how and when tenants and applicants were notified of the change, whether the change or notice thereof was made in writing and, if so, a copy of the change and/or notice.

7. Respondents George and Mary Ross shall post at any offices used by them or their agents which are open to the public a list of all available units, specifying for each unit, its address, the number of bedrooms in the unit, the rent for the unit, and the date of availability.

8. To ensure that this Order is followed, the Housing Discrimination Project, Inc., has agreed to provide fair housing training to Respondents and staff employed by Respondents in the housing rental business. In addition, HDP may monitor Respondents' tenant records twice each year. During the pendency of this Order, should HDP come to believe that it has or will become unable to carry out any or all of these tasks, in whole or in part, it shall so inform this tribunal, stating the reasons for its inability to so perform, and the Order may be modified as appropriate.

9. Within forty-five (45) days of the date on which this Order becomes final, Respondents George and Mary Ross shall pay actual damages to the Housing Discrimination Project, Inc. of $3,927.90 to compensate HDP for the past diversion of its resources, and $2,700 to compensate it for the future diversion of its resources necessitated by future monitoring, testing of the rental housing business owned by Respondents George and Mary Ross and the training of Respondents and/or their agents and employees.

10. Within forty-five (45) days of the date on which this Order becomes final, Respondents George and Mary Ross shall pay a civil penalty of $10,000 to the Secretary of HUD.

This Order is entered pursuant to 42 U.S.C. § 3612 (g)(3) and 24 C.F.R. § 104.910, and will become final upon the expiration of 30 days or the affirmance, in whole or in part, by the Secretary of HUD within that time.

/s/
WILLIAM C. CREGAR
Administrative Law Judge

Dated: July 7, 1994